

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION**

SWINGAWAY SPORTS PRODUCTS, INC.,

Plaintiff,

v.

ESCALADE, INC. d/b/a ESCALADE
SPORTS,

Defendant.

CASE NO. 3:13-cv-00024-RLY-WSH

**PLAINTIFF’S MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the Plaintiff respectfully requests leave to file the attached First Amended Complaint, and in support states as follows:

1. Plaintiff filed its initial Complaint on November 8, 2011, naming Escalade, Inc. d/b/a Escalade Sports (“Escalade”) as the sole Defendant. Plaintiff has since learned that Indiana Industries, Inc. (“Indian Industries”), which is believed to be a subsidiary of Escalade, may either be an additional party in interest or the correct party in interest in these proceedings.

2. Paragraph 16 of Plaintiff’s initial Complaint alleged that “Escalade is in the business of making and selling sports-related equipment and products ...” and that Escalade was the company that sold the Spring Trainer baseball training device that allegedly infringes on Plaintiff’s patent.

3. In response to Paragraph of 16 of Plaintiff’s Complaint, Escalade responded as follows:

Escalade, Inc. is not in the business of selling sport-related equipment. Indian Industries, Inc., which does business as Escalade Sports, is in the business of making and selling certain sports-related equipment. Escalade, Inc. is the parent company of Indian Industries, Inc. SwingAway should file a motion to correct the caption to correctly identify Indian Industries, Inc. as the Defendant. All other allegations of paragraph 16 are denied.

4. Based on the foregoing, Plaintiff seeks leave to amend its Complaint to add Indian Industries, Inc., as an additional Defendant to this action. Plaintiff's proposed First Amended Complaint leaves Escalade as an additional Defendant, since, on information and belief, Escalade is the name used to market and sell the allegedly infringing product. In addition, Plaintiff's proposed First Amended Complaint states a claim for inducement of infringement against Escalade, Inc., for its role in Indian Industries, Inc.'s infringement of Plaintiff's patent.

5. Finally, Plaintiff's proposed First Amended Complaint also names three individuals as Defendants who were high level employees of Escalade, Inc. and/or Indian Industries, Inc. These individuals are being added based on documents that Defendant has produced in discovery that show they were involved in the development, marketing, and/or sales of the product that is alleged to have infringed on Plaintiff's patent, and therefore may be personally liable for patent infringement, violations of the Lanham Act, and other wrongdoing.

6. Leave to amend the complaint "shall be freely given when justice so requires." FED. R. CIV. P. 15(a); *Barry Aviation Inc. v. Land O' Lakes Municipal Airport Comm'n*, 377 F.3d 682, 687 (7th Cir. 2004). The Seventh Circuit characterizes leave to amend under Rule 15(a) as nearly "automatic." *See Bohen v. City of East Chicago, Ind.*, 799 F.2d 1180, 1184 (7th Cir. 1986). Leave to amend is committed to the Court's discretion. *Daugherty v. Traylor Bros., Inc.*, 970 F.2d 348, 351 (7th Cir. 1992). Except in unusual circumstances not applicable here, leave should be granted absent undue delay that prejudices the opposing party. *Dubicz v. Commonwealth Edison Co.*, 377 F.3d 787, 792-93 (7th Cir. 2004); *Bohen*, 799 F.2d at 1184.

7. This motion is timely, as the Court's March 28, 2013, Case Management Plan set today, July 11, 2013, as the deadline file all motions for leave to amend pleadings and/or to join additional parties.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests leave to file the attached First Amended Complaint, and for all other just and proper relief.

Respectfully submitted,

/s/ Eric S. Pavlack
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed with the Court's ECF system. A copy will be sent electronically to all counsel of record by operation of the ECF system.

/s/ Eric S. Pavlack
Eric S. Pavlack